

Resources Safety and Health Queensland Bill 2019

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy, make this statement of compatibility with respect to amendments during consideration in detail to be moved to the Resources Safety and Health Queensland Bill 2019.

In my opinion, the amendments to be moved to the Resources Safety and Health Queensland Bill 2019 are compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The amendments during consideration in detail to be moved to the Resources Safety and Health Queensland Bill 2019 (the Bill) address a matter raised by the State Development, Natural Resources and Environment Committee (the Committee) consideration of the Bill. The amendments ensure that the Chief Executive Officer (CEO) of Resources Safety and Health Queensland (RSHQ) is appropriately qualified to effectively discharge their functions. The amendments also address a minor error to ensure that the legislation delivers its overall intent by including a definition of the Work Health and Safety Prosecutor.

Human Rights Issues

Human rights relevant to amendments to be moved to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human right that is relevant to the amendment to be moved to the Bill is the right to privacy and reputation, protected by section 25 of the HR Act. This protects the right of a person to not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and to not to have the person's reputation unlawfully attacked.

The amendments during consideration in detail to be moved to the Bill provide for the qualifications and experience required of the CEO of RSHQ. The amendments require that the

CEO have a professional qualification relevant to the resources industry, and professional experience in the resources sector.

The amendment responds to the Committee's recommendation that relevant qualifications and experience in the sector would be appropriate pre-requisites for the position, given the unique and complex nature of the resources sector.

While it is the applicant's discretion as to whether to apply for the role of CEO, the amendments to be moved to the Bill, if enacted, may limit or otherwise affect the right of privacy and reputation as the applicant may be asked to provide details of their qualification and experience to inform the decision.

If human rights may be subject to limitation if the amendments to be moved to the Bill are enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The amendments during consideration in detail to be moved to the Bill which provides for the qualifications and experience required of the CEO, engages the human right of privacy and reputation.

(a) the nature of the right

Section 25 of the HR Act protects the individual from interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right to privacy is broad and may include matters such as personal information, data collection and correspondence. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The requirement for an applicant to demonstrate that they have the professional qualifications and experience required for the role of CEO, has the potential to limit or otherwise affect the applicant's right to privacy and reputation.

(b) the nature of the purpose of the limitation to be imposed by the amendments to be moved to the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The functions of the CEO of RSHQ are to ensure the effective and efficient administration of RSHQ and the performance of its functions; and to manage the organisational unit under the control of the CEO.

As RSHQ is the regulator of safety and health in the Queensland resources sector, it is important the CEO is appropriately qualified and experienced to discharge these functions.

Requesting information regarding a person's relevant qualification is not deemed an arbitrary requirement for employment, noting the nature of the role. This requirement will mitigate the potential risk of the CEO not having the appropriate qualifications and experience in the sector.

The purpose of limiting the right to privacy and reputation is to assist the decision maker in determining whether an applicant has the appropriate qualifications and experience required to discharge the functions of CEO.

- (c) the relationship between the limitation to be imposed by the amendments to be moved to the Bill if enacted, and their purpose, including whether the limitation helps to achieve the purpose

Limiting the right to privacy and reputation by requiring the applicant to demonstrate their professional qualifications and experience as part of the application process will enable a decision-maker to appropriately consider these matters in determining the suitability for appointment as CEO.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments to be moved to the Bill

The amendments are the least restrictive way of achieving the policy intent of ensuring the person appointed to the role of CEO has the appropriate qualifications and experience to discharge the functions.

The Bill contains sufficient safeguards regarding the disclosure of information. The Bill provides that a person must not disclose information concerning the personal affairs of a person or commercially sensitive information obtained by the person in the administration of the Act, unless the disclosure meets particular limited circumstances. For example disclosure is made with the consent of the person from whom the information was obtained, or in a proceedings before a court in which the information is relevant.

- (e) the balance between the importance of the purpose of the amendments to be moved to the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any potential limitation on the human right of privacy and reputation arising from the amendments is considered to be outweighed by the benefits to the safety and health of workers and the broader community by ensuring the CEO of RSHQ has the appropriate qualifications and experience in overseeing the safety and health regulator of the Queensland resources sector.

- (f) any other relevant factors

Nil.

Conclusion

Given the unique and complex nature of the resources sector, it is important that the CEO has the relevant qualifications and experience in the sector.

The requirement for an applicant to demonstrate that they have the professional qualifications and experience required for the role has the potential to limit or otherwise affect the applicant's right to privacy and reputation. However, this limitation is considered reasonable to assist the decision maker in determining whether an applicant has the appropriate qualifications and experience required to discharge the functions of CEO. This potential impact is outweighed by protecting the safety and health of workers in the resources sector.

In my opinion, the amendments to be moved to the Resources Safety and Health Queensland Bill 2019 are compatible with human rights because they limit a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Hon Dr Anthony Lynham
Minister for Natural Resources, Mines and Energy

© The State of Queensland 2020